

1933



## OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

S. C. MANN  
ATTORNEY GENERAL

February 11, 1939

Hon. Stanley Timmins, County Attorney  
Harrison County  
Marshall, Texas

Dear Sir:

Opinion No. O-305  
Re: Authority of Commissioners'  
Court as to the appointment of  
Deputy Constables

Your request for an opinion as to whether the Commissioners' Court has authority to approve or reject any person appointed as a deputy by the constable because of any personal matter or at their discretion, has been received by this office.

Article 3902 provides that whenever the constable shall require the services of a deputy, he shall present a statement showing the probable receipts to be collected by the office during the fiscal year and the probable disbursements. This Article further provides that the Commissioners' Court shall enter an order authorizing such an appointment, fixing the compensation and shall determine the number of deputies to be appointed.

Article 6879a provides the constable desiring a deputy shall make a written application to the Commissioners' Court showing the necessity for such deputy and giving the name of each proposed appointee. A Commissioners' Court shall thereupon determine whether there is a need for such deputy or deputies.

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We construe these articles to be cumulative and by Article 3902 the Commissioners' Court had no right to do anything except authorize an appointment and by Article 6879a the Commissioners' Court is granted the authority to confirm or reject the appointment if no necessity exists.

We are of the opinion that the Commissioners' Court cannot refuse to authorize or confirm the appointment of a deputy constable for personal reasons and that the only question for the Court to decide, is the necessity for a deputy.

We are of the opinion if there is a necessity for the appointment of a deputy and the Commissioners' Court has arbitrarily refused to authorize or confirm the appointment of a deputy constable, that the remedy is for the constable and his appointee to bring a mandamus suit to compel authorization and confirmation.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*W.C.N.*

*Richard H. Cocke*  
Richard H. Cocke  
Assistant

RHC:ob

APPROVED:

*Eusebio C. Mauer*  
ATTORNEY GENERAL OF TEXAS

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